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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/460,361	12/13/1999	AKIRA UTSUMI		2392

7590 01/18/2005  
Jay P. Lessler  
Darby & Darby, P.C.  
805 Third Avenue  
New York, NY 10022

EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/460,361	<b>Applicant(s)</b> UTSUMI, AKIRA	
	<b>Examiner</b> Elizabeth M. Cole	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-12,15-19,21 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 6-12, 15-19, 21, 23-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3, 6-12, 15-19, 21, 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohigashi, U.S. Patent No. 4,594,283 as set forth in paragraph 4 of the previous action in view of Mellors et al, U.S. Patent No. 4,999,237. Ohigashi discloses a laminated material as set forth in previous action. Ohigashi does not teach the specifically claimed apparent densities of the two layers, although Ohigash does teach that the two layers should have different densities in order to permit moisture to pass through the layers and allow the shoes comprising the layers to dry more rapidly. Mellors teaches that shoe insoles may be made so that they have a very low density of less than 0.1 g/cc, preferably about 0.075-.085 g/cc. See col. 2, lines 6-10. Mellors teaches that the density of the nonwoven is a result effective variable, and that increasing the density will also increase the compression resistance of a particular material. Therefore, it would have been obvious to have selected the particular densities of the layers of Ohigashi as taught by Mellors in order to optimize the cushioning of the shoes, while still maintaining the difference in density between the two layers.
3. Applicants arguments regarding the 112 2<sup>nd</sup> paragraph rejection is persuasive and the rejection is withdrawn.
4. Applicant's arguments have been fully considered but are moot in view of the new grounds of rejection.

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5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

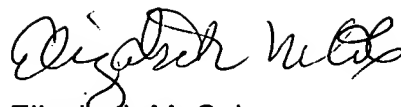
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (703) 872-9306.

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A handwritten signature in black ink, appearing to read "Elizabeth M. Cole". The signature is fluid and cursive, with the first name being the most prominent.

Elizabeth M. Cole  
Primary Examiner  
Art Unit 1771

e.m.c